

DECISION



1915964 Roney
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-200257

DATE: August 18, 1981

MATTER OF: Philibert A. Ouellet--Relocation expenses -
Closing costs paid by seller

- DIGEST:
1. Employee claims closing costs incident to purchase of new home. Agency questions claim since settlement sheet shows that closing costs were paid by seller. Closing costs paid by seller but included in sales price of residence may be allowed where they are clearly discernible and separable from price of realty, where both buyer and seller regard costs as having been paid by buyer, and where buyer documents costs and his liability therefor. Since seller in this case declines to state that closing costs were paid by buyer, and buyer has presented no evidence to rebut that statement, the claim may not be allowed.
 2. Agency asks whether rule of our decision Henry F. Holley, 56 Comp. Gen. 298 (1977), applies to homes purchased from private individuals in the resale market. Our decision in Holley allowed reimbursement of closing costs nominally paid for by the seller but, in actuality, added to the sales price of the realty and paid for by the buyer. Rule in Holley has been applied to transactions in the resale market to allow payment of such costs. See D. W. Holcombe, B-191235, October 25, 1978.

The Deputy Regional Administrator, Region Three, Federal Highway Administration, Department of Transportation requests our decision on whether closing costs that were apparently paid by the seller may be reimbursed to a transferred employee who purchased a residence at his new duty station, where the seller refused to provide a statement that the closing costs were included in the price of the residence.

[Request for Reimbursement of Relocation Expenses]

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Mr. George R. Turner, Jr., Deputy Regional Administrator, submits the claim of Mr. Philibert A. Ouellet for reimbursement of \$2,241.20 of closing costs that arose incident to the purchase of a residence in Mechanicsburg, Pennsylvania, at the time of his transfer. Mr. Ouellet purchased the house from the Pulte Corporation, which in the contract of sale, agreed to pay the closing costs. The closing costs are listed on the settlement sheet as having been paid from seller's funds, and are a deduction from the amount to be received by the seller. Mr. Ouellet was advised by the Department of Transportation that he could not be reimbursed for the closing costs because he had not submitted documentation to show that the seller regarded the closing costs as having been included in the price of the house and, in fact, paid by the buyer.

Mr. Ouellet then began a campaign to obtain the required statement from the Pulte Corporation. All of his many attempts were rebuffed. Pulte Corporation consistently maintained that, as stated in a letter dated June 19, 1980, to Mr. Ouellet:

"* * * the settlement sheet, as originally prepared, accurately reflects the transaction as it occurred."

Mr. Ouellet has consistently maintained that closing costs nominally paid by the seller are, in reality, just another factor considered in setting price. To this Pulte responded in the June 19, 1980, letter:

"As a point of further clarification, we wish to advise that several different factors are taken into consideration in pricing our homes. It is necessary for us to consider not only costs, including closing costs absorbed by us, but also the value of the home on the open market. Additionally, the possibility exist [sic] that our absorption of cost, in fact, reduces the net profit on each unit sold in the hope that volume can be increased sufficiently to cover such loss in gross profits. The net effect of such a policy would be to reduce the net profit per unit while hopefully increasing the net profit on an increased volume. It is not until we have fully considered all pertinent data that we can arrive at the proposed selling prices for our homes."

In support of his claim, Mr. Ouellet has submitted copies of letters that other Federal employees in similar situations have obtained from their builders, including another division of Pulte, stating that the closing costs, in fact, had been paid by the purchaser.

The agency forwarded Mr. Ouellet's claim to this Office for an advance decision, noting that reimbursement to an employee in cases such as this appears to turn only on the willingness of the seller to provide the requisite statement. Finally, Mr. Turner asks whether the same standards that apply to the purchase of a new home from the builder should be applied to the purchase of an existing house being resold by a private individual. He notes that:

"Closing costs could quite easily and justifiably be claimed to be paid 'eventually' from the buyer's funds, the seller having ostensibly priced the house to account for the closing costs paid."

The requirement that an employee submit documentation to show that both the buyer and the seller regarded the closing costs to have been paid by the purchaser was set out in our decision Henry F. Holley, 56 Comp. Gen. 298 (1977). In that decision, we stated that:

"* * * in claims in which closing costs have been included in the purchase price of a home and have been paid by the seller, [the rule] is that the buyer may be reimbursed for such costs, if the costs are otherwise allowable under applicable law and regulations, where:

- "(1) the closing costs are clearly discernible and separable from the price allocable to the realty;
- "(2) both the seller and the buyer regard the costs as having been paid by the buyer; and
- "(3) the buyer supplies documentation showing the amount of the closing costs and his liability for them."

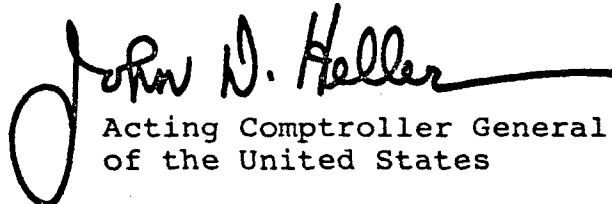
In every case that this Office previously has had before it concerning this issue, the employee was able to

obtain a statement from the seller or other appropriate entity that the closing costs were, in fact, paid by the buyer. However, in this case, Pulte Corporation maintains that the settlement sheet in this case correctly reflects that the seller paid the closing costs. Mr. Ouellet has not submitted any direct evidence to overcome Pulte's assertion. Furthermore, we note that the contract of sale places the liability for the closing costs on the seller. For these reasons, payment may not be allowed for the closing costs that he claims.

With regard to Mr. Turner's statement that reimbursement appears to turn on the seller's willingness to provide the requisite statement, we note that a statement from the seller is not the only acceptable evidence. This Office will accept other conclusive evidence to prove that the buyer actually paid the closing costs. For example, in Henry F. Holley, supra., the required statement was provided by the real estate agent. However, as in all claims before this Office, the burden of proof lies with the claimant. See 4 C.F.R. § 31.7 (1980). As Mr. Turner notes, any buyer may claim that he eventually pays for closing costs, the seller having priced the house to account for the closing costs paid. This is akin to Mr. Ouellet's argument that the closing costs become a cost item of the house, just like lumber and other building materials. Such an argument does not satisfy the burden of proof required by our decision in Henry F. Holley, supra.

Mr. Turner's final question is whether the rule of Holley is applicable only to new homes purchased from the builder or does it apply also to homes purchased on the resale market.

In D. W. Holcombe, B-191235, October 25, 1978, we applied the Holley rule in allowing a claim involving the resale of a residence. Thus, the Holley precedent may be applied to transactions in the resale market.


Acting Comptroller General
of the United States